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EXAMINER	
BORLINGHAUS, JASON M	
ART UNIT	**PAPER NUMBER**
3628	

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Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

Office Action Summary	**Application No.** 09/802,088	**Applicant(s)** KEITH, CHRISTOPHER	
	Examiner Jason M. Borlinghaus	**Art Unit** 3628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *28 November 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-23* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-23* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 - 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 7 and 13 claim a timer request or a term of an option being "less than about ten seconds." "Less than ten seconds" and "about ten seconds" would be appropriate but current language is indefinite and vague. For example fifteen seconds is "about ten seconds", so would twelve seconds be "less than about ten seconds?"

Claims 2 – 6, 8 – 12 and 14 – 23 are rejected based upon their dependency on Claims 1, 7 and 13.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 7 – 16 and 18 - 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hull (Hull, John C. *Introduction to Futures & Options Markets. 2nd Edition. Prentice-Hall.* Englewood Cliffs, New Jersey. 1995) in view of Disclosed Prior Art (applicant's specification, p. 27, lines 1 - 6).

Regarding Claim 7, Hull discloses a method comprising:

- receiving an option request from a user (investor). ("To illustrate how an options contract gets initiated, we suppose an investor instructs his or her broker to buy one call option contract on IBM stock with a strike price of $50 and an exercise date of October." – see p. 4);
- requesting the option from a market process (floor broker). ("The broker will relay these instructions to a trader on the floor of the CBOE. This trader will then find another trader who wants to sell one October call contract on IBM with a strike price of $50." – see p. 4); and
- the market process being a computer program (automated trading system) executing on a computer system (automated trading system) and

implementing rules of engagement by which information or merchandise is exchanged between trading processes (traders). (see p. 33).

Hull does not teach underlined limitations - a method comprising:

- <u>automatically</u> receiving a <u>short term</u> option request from a user;
- <u>the term of the option being less than about ten seconds</u>; and
- <u>automatically</u> requesting the <u>short term</u> option from a market process.

Disclosed Prior Art discloses a method comprising:

- receiving a short term option request from a user. ("So-called 'forwards' enable a trader to negotiate the expiration time. In conventional human-directed markets, a market maker will often grant a short-term option to a trade, sometimes for a fee and sometimes for a favor." – see p. 27, lines 1 - 6); and
- the market process being a computer program (automated facility) executing on a computer system (automated facility) and implementing rules of engagement by which information or merchandise is exchanged between trading processes (traders). (see p. 26, line 31 – p. 27, line 2).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Hull by incorporating short term option requests, as was disclosed by Disclosed Prior Art, to incorporate another type of option into the existing option markets and utilizing the same option request/receipt methodology.

Neither Hull nor Disclosed Prior Art teach a short term option request for an option term less than about ten seconds. However, Disclosed Prior Art does disclose

the ability "to negotiate the expiration time." (see p. 27, line 2). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Hull and Disclosed Prior to allow for any option term that the inventor desired. In re Kuhle, *526 F.2d 553, 555, 188 USPQ 7, 9 (CCPA 1975).*

Neither Hull nor Disclosed Prior Art teaches that the short option method is automatic nor automated. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have automated the method, since it has been held that broadly providing a mechanical or automatic means to replace manual activity that accomplishes the same result involves only routine skill in the art. *In re Venner*, 120 USPQ 192.

Regarding Claims 8 - 10, Hull discloses a method further comprising:

- selecting one of a plurality of markets from which to request the short term option. ("Most exchanges offering future contracts now also offer options on these futures contracts. Thus, the Chicago Board of Trade offers options on corn futures, the Chicago Mercantile Exchange offers options on live cattle futures, the International Monetary Markets offers options on foreign currency futures, and so one. Both options and futures have been outstandingly successful." – see pp. 5 - 6 – establishing a plurality of markets through which to request the short term option. "Arbitrage involves locking a riskless profit by simultaneously entering into transactions in two or more markets." – see p. 11 - establishing that

market participants can select one market, if not a plurality of markets, in which to operate);

- receiving notice from the market process (floor broker) that the short term option was granted. ("This trader will then find another trader who wants to sell one October call contract on IBM with a strike price of $50. A price will be agreed upon and the deal will be done...Therefore, the investor must arrange for $600 to be remitted to the exchange through his or her broker. The exchange will then arrange for this to be passed on to the party on the other side of the transaction" – see p. 4 – It is inherent that the floor broker would notify the user that the short term option was granted, if for no other reason than by virtue of the fact that the user must now pay for the secured option).
- further comprising forwarding the notice that the short term option was granted to the user. (supra – see p. 4)

Hull does not teach a method further comprising:

- <u>automatically</u> selecting one of a plurality of markets from which to request the short term option.

Neither Hull nor Disclosed Prior Art teaches that the short option method is automatic. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have automated the method, since it has been held that broadly providing a mechanical or automatic means to replace manual activity that

accomplishes the same result involves only routine skill in the art. *In re Venner*, 120 USPQ 192.

Regarding Claim 11, neither Hull nor Disclosed Prior Art teach a method:

- wherein the term of the short term option is less than one second.

However, Disclosed Prior Art does disclose the ability "to negotiate the expiration time." (see p. 27, line 2) It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Hull and Disclosed Prior to allow for any option term that the inventor desired.

Regarding Claim 12, Hill discloses a method:

- wherein the steps of automatically receiving and requesting are performed by a trading process. ("Under an automated system, buyer and seller would be matched by a computer. A potential buyer would sit at a computer terminal and indicate the price at which he or she is willing to buy. This price would be relayed throughout the system. Another trade, also sitting at a computer terminal and logged into the system, could indicate the price at which he or she is willing to sell at the buyer's price by pressing the appropriate the appropriate keys." – see p. 33).

Regarding Claim 13, Hull discloses a method comprising:

- receiving, at a computer program (automated trading system) executing on a computer system (automated trading system) and implementing rules of engagement by which information or merchandise is exchanged

between trading processes (traders), a request for a financial instrument (future). (see p. 33);

- receiving, a request for an option. (supra – see p. 4); and
- granting the option. (supra – see p. 4)

Hull does not teach the underlined limitations - a method comprising:

- receiving a request for a <u>short term</u> option <u>having a term less than about ten seconds;</u> and
- <u>automatically</u> granting the <u>short term</u> option.

Disclosed Prior Art discloses a method comprising:

- receiving, at a computer program (automated facility) executing on a computer system (automated facility) and implementing rules of engagement by which information or merchandise is exchanged between trading processes (traders), a request for an option. (see p. 26, line 31 – p. 27, line 2); and
- receiving and granting short term option request. ("So-called 'forwards' enable a trader to negotiate the expiration time. In conventional human-directed markets, a market maker will often grant a short-term option to a trade, sometimes for a fee and sometimes for a favor." – see p. 27, lines 2 - 6).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Hull by incorporating short term option requests,

as was disclosed by Disclosed Prior Art, to incorporate another type of option into the existing option markets and utilizing the same option request/receipt methodology.

Neither Hull nor Disclosed Prior Art teach a short term option request for an option term less than about ten seconds. However, Disclosed Prior Art does disclose the ability "to negotiate the expiration time." (see p. 27, line 2). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Hull and Disclosed Prior to allow for any option term that the inventor desired. In re Kuhle, *526 F.2d 553, 555, 188 USPQ 7, 9 (CCPA 1975).*

Neither Hull nor Disclosed Prior Art teaches that the short option method is automatic nor automated. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have automated the method, since it has been held that broadly providing a mechanical or automatic means to replace manual activity that accomplishes the same result involves only routine skill in the art. *In re Venner*, 120 USPQ 192.

Regarding Claim 14, Claim 14 recites similar limitations to Claim 12 and is therefore rejected using the same art and rationale as applied in the rejection of Claim 12.

Regarding Claim 15, Claim 15 recites similar limitations to Claim 11 and is therefore rejected using the same art and rationale as applied in the rejection of Claim 11.

Regarding Claim 16, Hull discloses a method:

- wherein the request includes the term of the option. (supra – see p. 4).

Hull does not teach a method:

- wherein the request includes the term of the <u>short term</u> option.

Disclosed Prior Art discloses a method comprising:

- a request for a short term option. ("So-called 'forwards' enable a trader to negotiate the expiration time. In conventional human-directed markets, a market maker will often grant a short-term option to a trade, sometimes for a fee and sometimes for a favor." – see p. 27 – It is inherent that the request for a negotiated short term option would include the term, the negotiated item, itself.).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Hull by incorporating short term option terms, as was disclosed by Disclosed Prior Art, into the option request to provide information to the recipient concerning the nature of the option requested.

Regarding Claims 18 - 19, Hull discloses a method:

- wherein the option request indicates a desired resource (options' underlying assets), and further comprising automatically reserving the desired resource (funds in margin account to cover the value of options' underlying assets) until the expiration time. ("When an investor writes an option, he or she is required to maintain funds in a margin account. This is because the investor's broker and the exchange want to satisfied that the investor will not default if the options is exercised." – see p. 188); and

- releasing the reserved resource (funds in margin account) at the expiration of the option when the resource has not been used (option has not been exercised). ("Funds can be withdrawn from the margin account when the calculation indicates that the margin required is less than the margin account." – see p. 189).

Hull does not teach a method:

- wherein the short term option request indicates a desired resource, and further comprising automatically reserving the desired resource until the expiration time; and
- automatically releasing the reserved resource at the expiration of the short term option when the resource has not been used.

Disclosed Prior Art discloses a method comprising:

- receiving and granting a short term option request. ("So-called 'forwards' enable a trader to negotiate the expiration time. In conventional human-directed markets, a market maker will often grant a short-term option to a trade, sometimes for a fee and sometimes for a favor." – see p. 27, lines 2 - 6).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Hull by incorporating short term option requests, as was disclosed by Disclosed Prior Art, to incorporate another type of option into the existing option markets and utilizing the same option trading protocols.

Neither Hull nor Disclosed Prior Art teach that the releasing of funds is automatic. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have automated the method, since it has been held that broadly providing a mechanical or automatic means to replace manual activity that accomplishes the same result involves only routine skill in the art. *In re Venner*, 120 USPQ 192.

Regarding Claim 20, Hull discloses a method:

- wherein the option request indicates a price for the desired resource (options' underlying assets' value), and further comprising receiving a stop exercise instruction (stop order). ("A stop order or a stop-loss order also specifies a particular price...Suppose a stop order to sell at $30 is issued when the price is $35." – see p. 34); and
- pairing the reserved resource (margin funds) at the price in the request in response to the stop exercise instruction. ("In effect, a stop order becomes a market order as soon as the specified price has been hit." – see p. 34. "The main task of the clearinghouse is to keep track of all transactions that take place during a day so that it can calculate the net position of each of its members." – see p. 26. It is inherent that when a stop exercise instruction is implemented and an order is placed, that the clearinghouse pairs the options purchased in the market to the margin funds maintained to prevent default on that purchased option).

Hull does not teach a method:

- wherein the <u>short term</u> option request indicates a price for the desired resource; and further comprising receiving a stop exercise instruction, and <u>automatically</u> pairing the reserved resource at the price in the request in response to the stop exercise instruction.

Disclosed Prior Art discloses a method comprising:

- receiving and granting a short term option request. ("So-called 'forwards' enable a trader to negotiate the expiration time. In conventional human-directed markets, a market maker will often grant a short-term option to a trade, sometimes for a fee and sometimes for a favor." – see p. 27, lines 2 - 6).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Hull by incorporating short term option requests, as was disclosed by Disclosed Prior Art, to incorporate another type of option into the existing option markets and utilizing the same option trading protocols.

Neither Hull nor Disclosed Prior Art teach that the releasing of funds is automatic. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have automated the method, since it has been held that broadly providing a mechanical or automatic means to replace manual activity that accomplishes the same result involves only routine skill in the art. *In re Venner*, 120 USPQ 192.

Regarding Claim 21 – 23, Hull discloses a method:

- wherein the stop exercise instruction (stop order) is received from a trading process (trader) (supra. – see p. 4 – It is inherent that a stop exercise instruction is received from a trading process, either on his own behalf or on the behalf of a represented investor, by virtue of it being executed in the marketplace);
- wherein a platform process (automated system) is utilized. ("Under an automated system, buyer and seller would be matched by a computer. A potential buyer would sit at a computer terminal and indicate the price at which he or she is willing to buy. This price would be relayed throughout the system. Another trade, also sitting at a computer terminal and logged into the system, could indicate the price at which he or she is willing to sell at the buyer's price by pressing the appropriate the appropriate keys." – see p. 33); and
- wherein receiving and granting is performed by a market process (floor brokers). (supra – see p. 4).

Hull does not teach a method:

- wherein the stop exercise instruction is received from a trading process.
- <u>wherein the stop exercise instruction is received from a platform process.</u>
- wherein the <u>automatically</u> receiving and granted are performed by a market process.

Neither Hull nor Disclosed Prior Art teach that the stop exercise instruction is transmitted, received or granted is automatic. However, it would have been obvious to

one of ordinary skill in the art at the time the invention was made to have automated the method, since it has been held that broadly providing a mechanical or automatic means to replace manual activity that accomplishes the same result involves only routine skill in the art. *In re Venner*, 120 USPQ 192.

Claims 1 – 6 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hull in view of Disclosed Prior Art (specification, p. 27, lines 2 – 6) and Rosen (US Patent 5,453,601).

Regarding Claims 1 - 2, Hull discloses a method comprising:

- receiving a timer (exercise date/time) request for an option expiration from a market process (floor trader). ("To illustrate how an options contract gets initiated, we suppose an investor instructs his or her broker to buy one call option contract on IBM stock with a strike price of $50 and an exercise date of October. The broker will relay these instructions to a trader on the floor of the CBOE. This trader will then find another trader who wants to sell one October call contract on IBM with a strike price of $50." – see p. 4 – It is inherent in finding another trader, that another trader would receive the request for the option); and
- the market process being a computer program (automated trading system) executing on a computer system (automated trading system) and implementing rules of engagement by which information or merchandise is exchanged between trading processes (traders). (see p. 33).

Hull does not teach the underlined limitations - a method comprising:

- automatically receiving a timer request of less than about ten seconds for a short term option expiration from a market process;
- automatically setting a timer to indicate the short term option expiration time; and
- resetting the timer to ensure the short term option remains valid.

Disclosed Prior Art discloses a method comprising:

- receiving a request for a short term option expiration. ("So-called 'forwards' enable a trader to negotiate the expiration time. In conventional human-directed markets, a market maker will often grant a short-term option to a trade, sometimes for a fee and sometimes for a favor." – see p. 27, lines 2 - 6 – establishing the receipt and granting of a request for a short term option); and
- the market process being a computer program (automated facility) executing on a computer system (automated facility) and implementing rules of engagement by which information or merchandise is exchanged between trading processes (traders). (see p. 26, line 31 – p. 27, line 2).

Utilizing a timer or clock to indicate an expiration time and setting/resetting a clock or timer to indicate the time/date at which an activity is to occur is old and well known in the art of management systems and computer networks. As evidenced by Rosen which monitors the expiration time/date of electronic notes utilizing an electronic timer function. ("Clock/Timer: Controls transaction timeout, expiration of the validity of

the electronic notes, expiration of the certificate, and a general clock functions." – see col. 16, lines 21 – 24).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Hull by incorporating a short term option expiration, as was disclosed by Disclosed Prior Art, to allow for the market processes to offer a greater array of options products, specifically short term options with terms shorter than standard available options.

Neither Hull nor Disclosed Prior Art teach a short term option request for an option term less than about ten seconds. However, Disclosed Prior Art does disclose the ability "to negotiate the expiration time." (see p. 27, line 2). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Hull and Disclosed Prior to allow for any option term that the inventor desired. In re Kuhle, *526 F.2d 553, 555, 188 USPQ 7, 9 (CCPA 1975).*

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Hull and Disclosed Prior Art by incorporating a timer, as was disclosed by Rosen, to allow for the market participants to manage and monitor the short term option expirations. As Hull disclosed "Some brokerage firms will <u>automatically exercise options for their clients at expiration</u> when it is in their clients' best interest to do so." (see p. 190). Such an automatic exercise of options would indicate some management system to monitor and administer the options at expiration time and, therefore, it would have been obvious to incorporate a common technology such as a timer to further manage and ensure the automatic exercise of expired options.

Neither Hull, Disclosed Prior Art nor Rosen teach that the short term option method is automatic nor automated. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have automated the method, since it has been held that broadly providing a mechanical or automatic means to replace manual activity that accomplishes the same result involves only routine skill in the art. *In re Venner*, 120 USPQ 192.

Regarding Claims 3 - 5, Hull discloses a method further comprising:

- further comprising sending an option expiration notice to the market process (floor broker/Exchange). ("This trader will then find another trader who wants to sell one October call contract on IBM with a strike price of $50. A price will be agreed upon and the deal will be done...Therefore, the investor must arrange for $600 to be remitted to the exchange through his or her broker. The exchange will then arrange for this to be passed on to the party on the other side of the transaction" – see p. 4 – It is inherent that in the granting of a short term option expiration that the floor broker, acting as the marketplace, would be notified of its granting. Furthermore, since financial settlement occurs through the exchange, itself, it is inherent that the exchange would be notified of the granting of short term option expiration);
- wherein the timer (exercise date/time) request also includes identification of a trading process (requesting floor broker), and further comprising sending an option expiration notice to the trading process (requesting floor

broker). ("To illustrate how an options contract gets initiated, we suppose an investor instructs his or her broker to buy one call option contract on IBM stock with a strike price of $50 and an exercise date of October. The broker will relay these instructions to a trader on the floor of the CBOE. This trader will then find another trader who wants to sell one October call contract on IBM with a strike price of $50. A price will be agreed upon and the deal will be done...Therefore, the investor must arrange for $600 to be remitted to the exchange through his or her broker. The exchange will then arrange for this to be passed on to the party on the other side of the transaction" – see p. 4 – It is inherent that the request includes identification of the trading process as the request is communicated through the trading process to the recipient and, furthermore, it is inherent that a notice is sent to the requesting trading process establishing whether the request was to be granted or denied); and

- creating an option manager process (management system) in response to the timer request. ("The Options Clearing Corporation (OCC)...It guarantees that the option writer will fulfill his or her obligations under the terms of the option contract and keeps a record of all long and short positions...The OCC automatically exercises stock options owned by individuals that are in the money unless specifically instructed not to do so." – see p. 190 – It is inherent that OCC possesses a manager process,

human if not computerized, by virtue of its recording, monitoring and automatically exercising options).

Hull does not teach a method further comprising:

- further comprising sending a <u>short term</u> option expiration notice to the market process;
- wherein the timer request also includes identification of a trading process, and further comprising sending a <u>short term</u> option expiration notice to the trading process; and
- creating a <u>short term</u> option manager process in response to the timer request.

Disclosed Prior Art discloses a method comprising:

- requesting and granting a short term option expiration. ("So-called 'forwards' enable a trader to negotiate the expiration time. In conventional human-directed markets, a market maker will often grant a short-term option to a trade, sometimes for a fee and sometimes for a favor." p. 27, lines 2 - 6 – establishing the requesting and granting of a request for a short term option).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Hull by incorporating a short term option expiration, as was disclosed by Disclosed Prior Art, to allow for the market processes to offer a greater array of options products, specifically short term options with terms shorter than standard available options.

Regarding Claim 6, Hull discloses a method:

- wherein requesting and offering are performed by a platform process. ("Under an automated system, buyer and seller would be matched by a computer. A potential buyer would sit at a computer terminal and indicate the price at which he or she is willing to buy. This price would be relayed throughout the system. Another trade, also sitting at a computer terminal and logged into the system, could indicate the price at which he or she is willing to sell at the buyer's price by pressing the appropriate the appropriate keys." – see p. 33).

Neither Hull, Disclosed Prior Art nor Rosen teach a method:

- <u>wherein the automatically receiving and setting are performed by a platform process.</u>

However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have automated the method, since it has been held that broadly providing a mechanical or automatic means to replace manual activity that accomplishes the same result involves only routine skill in the art (*In re Venner*, 120 USPQ 192), especially in light of the existing relocation of some manual trading activities to an automated system.

Regarding Claim 17, Claim 17 recites similar limitations to Claims 1 and 6, in combination, and is therefore rejected using the same art and rationale as applied in the rejection of Claims 1 and 6.

Response to Arguments

Applicant's arguments filed 11/28/05 have been fully considered but they are not persuasive.

Regarding rejection of Claims 7 and 13 under § 103, the applicant argues that prior art does not teach or suggest all claim limitations. Specifically, applicant argues that prior art does not teach nor suggest the limitations:

- an option term of less than about ten seconds; and
- a computer program implementing rules of engagement by which information or merchandise is exchanged between trading processes.

Furthermore, applicant argues that prior art teaches away from such limitations.

Examiner assumes the applicant means to address Claims 1 and 13, as currently amended, as such limitations were have only just been incorporated into independent Claims 1 and 13, and were not present when originally rejected.

Regardless, prior art does not teach away from said limitations. Disclosed Prior Art discloses that with "conventional options" traders are enabled "to negotiate the expiration time." (see p. 27, lines 1 –2). Disclosed Prior Art further discloses "a market maker will often grant a short-term option to a trader" (see p. 27, lines 3 – 4), although the market maker "is reluctant to grant such stops for more than intervals of time measured in tens of seconds." (see p. 27, lines 4 – 6). Therefore, if "the expiration time" of "conventional options" can be negotiated, examiner sees no reason that options cannot be negotiated to "an option term of less then about ten seconds." This is particularly buttressed by the fact that "short-term options" already exist and market

makers are already measure expiration times in such minute quantities as "tens of seconds".

Additionally, while prior art does discuss conventional human-traded markets, prior art also discusses automated trading systems. Disclosed Prior Art discusses "an automated facility for trading these conventional options." (see p. 27, line 1). And Hull discusses the automated trading of another financial instrument, futures, and its possible future expansion to all exchanges replacing all human-traded markets (see p. 33). Therefore, both Disclosed Prior Art and Hull recognize the use of automated systems to trade financial instruments and Hull discusses the expansion of such automated systems into new exchanges.

Finally, as it would have been obvious to one of ordinary skill in the art at the time the invention was made to have automated a manual activity, since it has been held that broadly providing a mechanical or automatic means to replace manual activity that accomplishes the same result involves only routine skill in the art. *In re Venner*, 120 USPQ 192. And as automated trading systems existed for conventional options, among other financial instruments, it would have been even more obvious to automate human-traded markets that handle short term options as has been done with conventional option markets.

Regarding rejection of Claims 1 under § 103, the applicant argues that prior art does not teach or suggest all claim limitations. Specifically, applicant argues that Rosen does not teach "utilizing a timer or clock to indicate an expiration time."

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Rosen does disclose a utilizing a timer or clock to indicate an expiration time. Rosen discloses, "For security reasons, all electronic notes expire after a preset ***time***." (emphasis added – see col. 6, lines 50 – 57). Rosen also discloses, "***Clock/Timer. Controls*** transaction timeout expiration, ***expiration of the validity of the electronic notes***, expiration of the certificate and general clock functions." (emphasis added – see col. 16, lines 20 – 24).

As applicant argues Rosen does utilize examples with expiration dates, for example, five days to thirty days. (see col. 23, lines 49 – 59). However, Rosen does state that data fields on the electronic notes are in the form of "day:hr:min". (see col. 21, lines 5 –23). Furthermore, Rosen discloses, "Other time monitoring forms (e.g. including ***seconds***) are, of course, possible." (see col. 21, lines 5 – 23). Rosen's statements therefore disclose the possibility of the expiration date/time being measured in days, hours, minutes and even seconds.

Taken in conjunction with the previously discussed prior art of Hull and Disclosed Prior Art which establish that short term options already exist, automated trading systems already exist and the short term options' expiration can be negotiated to any timeframe by market participants, it would have been obvious to modify the automated

options trading system to incorporate an automated timer, as disclosed by Rosen, to monitor the expiration of said options, setting the timer to account for the duration of said options, be the expiration date be one year or one second in the future.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason M. Borlinghaus whose telephone number is (571) 272-6924. The examiner can normally be reached on 8:30am-5:00pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hyung Sough can be reached on (571) 272-6799. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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